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ASSEMBLY BILL NO. 96—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION  
ON THE ADMINISTRATION OF JUSTICE)

PREFILED JANUARY 25, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the admissibility of psychological or psychiatric evidence. (BDR 4-558)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

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AN ACT relating to evidence; prohibiting a court from ordering a psychological or psychiatric examination of a victim of or a witness to an alleged sexual offense; authorizing a court to exclude psychological or psychiatric testimony in certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law permits the introduction of expert testimony in prosecutions for  
2 sexual assault as evidence regarding a victim’s behavior or mental or physical  
3 condition. (NRS 50.345) **Section 1** of this bill prohibits a court from ordering a  
4 victim of or a witness to an alleged sexual offense to submit to a psychological or  
5 psychiatric examination. **Section 1** also authorizes a court to exclude certain  
6 testimony concerning a previous psychological or psychiatric examination of a  
7 victim of or a witness to an alleged sexual offense upon a showing of a compelling  
8 need for an additional psychological or psychiatric examination and a refusal by the  
9 victim or witness to consent to the additional examination.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 50 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       1. *In any prosecution for an alleged sexual offense, the court*  
4 *shall not order a victim or witness of the alleged sexual offense to*  
5 *take or submit to a psychological or psychiatric examination.*

6       2. *If a psychological or psychiatric examination of the victim*  
7 *or witness has been previously performed with respect to the*  
8 *alleged sexual offense, any party may make a prima facie showing*  
9 *of a compelling need for an additional psychological or*  
10 *psychiatric examination of the victim or witness.*

11       3. *In determining whether such a prima facie showing has*  
12 *been made, the court shall consider whether there is:*

13       (a) *A reasonable basis for believing that the mental or*  
14 *emotional state of the victim or witness may have affected his or*  
15 *her ability to perceive and relate events relevant to the*  
16 *prosecution; and*

17       (b) *Any corroboration of the sexual offense other than the*  
18 *testimony of the victim or witness.*

19       4. *If the court determines that such a prima facie showing*  
20 *has been made, the court shall set forth a particularized factual*  
21 *finding specifying the reasons why the additional examination is*  
22 *warranted.*

23       5. *If the victim or witness:*

24       (a) *Consents to such an additional psychological or psychiatric*  
25 *examination, the court shall set parameters for the examination*  
26 *consistent with the purpose of determining the ability of the victim*  
27 *or witness to perceive and relate events relevant to the prosecution.*

28       (b) *Refuses to consent to such an additional psychological or*  
29 *psychiatric examination, the court may exclude the testimony of*  
30 *the person who previously performed the psychological or*  
31 *psychiatric examination of the victim or witness.*

32       6. *As used in this section:*

33       (a) *“Sexual offense” has the meaning ascribed to it in*  
34 *NRS 179D.097.*

35       (b) *“Victim or witness” includes any person who alleges that*  
36 *he or she is a victim of or a witness to an alleged sexual offense.*

37       **Sec. 2.** NRS 50.260 is hereby amended to read as follows:

38       50.260 As used in NRS 50.260 to 50.345, inclusive, *and*  
39 *section 1 of this act*, unless the context otherwise requires,  
40 “prohibited substance” has the meaning ascribed to it in  
41 NRS 484C.080.



1       **Sec. 3.** NRS 176.145 is hereby amended to read as follows:

2       176.145 1. The report of any presentence investigation must  
3 contain:

4       (a) Any prior criminal record of the defendant;

5       (b) Information concerning the characteristics of the defendant,  
6 the defendant's financial condition, the circumstances affecting the  
7 defendant's behavior and the circumstances of the defendant's  
8 offense that may be helpful in imposing sentence, in granting  
9 probation or in the correctional treatment of the defendant;

10       (c) ~~Information~~ *Except as otherwise provided in section 1 of*  
11 *this act, information* concerning the effect that the offense  
12 committed by the defendant has had upon the victim, including,  
13 without limitation, any physical or psychological harm or financial  
14 loss suffered by the victim, to the extent that such information is  
15 available from the victim or other sources, but the provisions of this  
16 paragraph do not require any particular examination or testing of the  
17 victim, and the extent of any investigation or examination is solely  
18 at the discretion of the court or the Division and the extent of the  
19 information to be included in the report is solely at the discretion of  
20 the Division;

21       (d) Information concerning whether the defendant has an  
22 obligation for the support of a child, and if so, whether the  
23 defendant is in arrears in payment on that obligation;

24       (e) Data or information concerning reports and investigations  
25 thereof made pursuant to chapter 432B of NRS that relate to the  
26 defendant and are made available pursuant to NRS 432B.290;

27       (f) The results of the evaluation of the defendant conducted  
28 pursuant to NRS 484C.300, if such an evaluation is required  
29 pursuant to that section;

30       (g) A recommendation of a minimum term and a maximum term  
31 of imprisonment or other term of imprisonment authorized by  
32 statute, or a fine, or both;

33       (h) A recommendation, if the Division deems it appropriate, that  
34 the defendant undergo a program of regimental discipline pursuant  
35 to NRS 176A.780;

36       (i) If a psychosexual evaluation of the defendant is required  
37 pursuant to NRS 176.139, a written report of the results of the  
38 psychosexual evaluation of the defendant and all information that is  
39 necessary to carry out the provisions of NRS 176A.110; and

40       (j) Such other information as may be required by the court.

41       2. The Division may include in the report any additional  
42 information that it believes may be helpful in imposing a sentence,  
43 in granting probation or in correctional treatment.



1       **Sec. 4.** NRS 176.151 is hereby amended to read as follows:

2       176.151 1. If a defendant pleads guilty, guilty but mentally ill  
3 or nolo contendere to, or is found guilty or guilty but mentally ill of,  
4 one or more category E felonies, but no other felonies, the Division  
5 shall not make a presentence investigation and report on the  
6 defendant pursuant to NRS 176.135, unless the Division has not  
7 made a presentence investigation and report on the defendant  
8 pursuant to NRS 176.135 within the 5 years immediately preceding  
9 the date initially set for sentencing on the category E felony or  
10 felonies and:

11       (a) The court requests a presentence investigation and report; or

12       (b) The prosecuting attorney possesses evidence that would  
13 support a decision by the court to deny probation to the defendant  
14 pursuant to paragraph (b) of subsection 1 of NRS 176A.100.

15       2. If the Division does not make a presentence investigation  
16 and report on a defendant pursuant to subsection 1, the Division  
17 shall, not later than 45 days after the date on which the defendant is  
18 sentenced, make a general investigation and report on the defendant  
19 that contains:

20       (a) Any prior criminal record of the defendant;

21       (b) Information concerning the characteristics of the defendant,  
22 the circumstances affecting the defendant's behavior and the  
23 circumstances of the defendant's offense that may be helpful to  
24 persons responsible for the supervision or correctional treatment of  
25 the defendant;

26       (c) ~~Information~~ *Except as otherwise provided in section 1 of*  
27 *this act, information* concerning the effect that the offense  
28 committed by the defendant has had upon the victim, including,  
29 without limitation, any physical or psychological harm or financial  
30 loss suffered by the victim, to the extent that such information is  
31 available from the victim or other sources, but the provisions of this  
32 paragraph do not require any particular examination or testing of  
33 the victim, and the extent of any investigation or examination and  
34 the extent of the information included in the report is solely at the  
35 discretion of the Division;

36       (d) Data or information concerning reports and investigations  
37 thereof made pursuant to chapter 432B of NRS that relate to the  
38 defendant and are made available pursuant to NRS 432B.290; and

39       (e) Any other information that the Division believes may be  
40 helpful to persons responsible for the supervision or correctional  
41 treatment of the defendant.

